

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

Plaintiff(s)

vs.

ROBERT DAWAYNE SMITH

Defendant(s)

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Criminal No. JFM-07-0580

Civil Action No. JFM-12-2527

MEMORANDUM

Robert Dawayne Smith has filed a motion under 28 U.S.C. §2255. The motion will be denied for two reasons.

First, the record now makes clear that the motion is time-barred.

Second, on the merits it is clear that Smith was not improperly found to be an armed career criminal. Smith relies upon *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011). In *Simmons* the Fourth Circuit held that a North Carolina sentencing regimen under which the maximum punishment possible would exceed one year imprisonment only if the State demonstrated that aggravating factors existed sufficient to warrant an increased sentence and that the defendant possessed fourteen or more criminal history points as calculated under North Carolina's statutory sentencing regime. In *Simmons* these conditions were not proven. Therefore the maximum possible sentence for the defendant's prior conviction was not more than one year and could not serve as a predicate for an enhanced federal sentence.

In this case, in contrast, although one of Smith's convictions resulted in a one-year suspended sentence, the Maryland statute under which Smith was sentenced unconditionally provided a maximum penalty of ten years imprisonment. Thus, Smith was properly sentenced as

an armed career criminal.

A separate order is being entered herewith denying Smith's motion.

Date: November 26, 2012

/s/
J. Frederick Motz
United States District Judge